



**U.S. Department of Justice**

**Office of Information Policy**

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*Washington, D.C. 20530*

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**Significant New Freedom of Information Act Decisions**

**Exemption 1**

***Int'l Counsel Bureau v. CIA*, No. 09-2269, 2011 WL 1195875 (D.D.C. Mar. 31, 2011)  
(Bates, J.)**

**Re:** Request for records pertaining to four individuals allegedly or previously detained at Guantanamo Bay Naval Base, Cuba

**Holding:** Granting CIA's motion for partial summary judgment as to its assertion of the Glomar response on the basis of either Exemption 1 or Exemption 3

***Ctr. for Int'l Env'tl. Law v. Office of U.S. Trade Rep.*, No. 01-498, 2011 WL 1379823 (D.D.C. Apr. 12, 2011) (Roberts, J.)**

**Re:** Request for records concerning sessions of the Negotiating Group on Investment for the Free Trade Agreement of the Americas (FTAA); remaining at issue is one document withheld pursuant to Exemption 1

**Holding:** Denying USTR's renewed motion for summary judgment where it has not sufficiently demonstrated that disclosure of one particular document would harm the United States' national security interests, and directing the filing of a schedule on which the case should proceed

### **Exemption 2**

***Milner v. Dep't of the Navy*, No. 09-1163, 2011 WL 797699 (U.S. Mar. 7, 2011) (Kagan, J.)**

**Re:** Request for records pertaining to Navy documents related to explosive data and maps used in storing munitions at a naval base

**Holding:** Reversing and remanding the decision of Ninth Circuit and holding that: "Exemption 2, consistent with the plain meaning of the term 'personnel rules and practices,' encompasses only records relating to issues of employee relations and human resources."

### **Exemption 3**

***Cent. Platte Nat. Res. Dist. v. USDA*, No. 10-3205, 2011 WL 2519508 (8th Cir. June 27, 2011) (Murphy, J.)**

**Re:** Request for Geospatial Information System (GIS) data related to farmland in eleven Nebraska counties

**Holding:** Affirming the district court's ruling which granted summary judgment to the USDA on the basis that it properly withheld the requested geospatial data pursuant to Exemption 3 and dismissed plaintiff's Administrative Procedure Act claim

***Quick v. Dep't of Com.*, No. 09-2064, 2011 WL 1326928 (D.D.C. Apr. 7, 2011) (Kollar-Kotelly, J.)**

**Re:** Request for raw data used by the National Institute of Standards and Technology (NIST) in its architectural and engineering remodeling of the collapse of the World Trade Center 7 building on September 11, 2001

**Holding:** Granting defendant's motion for summary judgment based on the adequacy of its search, its withholdings under Exemption 3, and its showing of segregability; denying plaintiff's cross-motion for summary judgment and his request for discovery

**Exemption 4**

***Watkins v. U.S. Bureau of Customs & Border Protect.*, No. 09-35996, 2011 WL 1709852 (9th Cir. May 6, 2011) (Walter, J.)**

**Re:** Requests for CBP's Notices of Seizure of Infringing Merchandise from various commercial ports

**Holding:** Affirming the district court's decision that Exemption 4 applies to the requested material, but concluding that CBP has waived that protection

***Honeywell Tech. Solutions, Inc. v. Dep't of the Air Force*, No. 05-1772, 2011 WL 1595161 (D.D.C. Apr. 19, 2011) (Hogan, J.)**

**Re:** Reverse-FOIA suit; plaintiff seeks to enjoin the Air Force from disclosing certain information pursuant to a FOIA request pertaining to a contract between the two parties

**Holding:** Remanding the case, in part, for the Air Force to consider plaintiff's arguments regarding substantial competitive harm with respect to certain documents; granting plaintiff's motion for summary judgment, in part, as to a record for which it demonstrated that substantial competitive harm would likely result from its release; holding in abeyance plaintiff's motion to strike declaration filed by the Air Force

### **Exemption 5**

***McKinley v. Bd. of Gvn'rs of the Fed. Reserve Sys.*, No. 10-5353, 2011 WL 2162896 (D.C. Cir. June 3, 2011) (Henderson, J.)**

**Re:** Request for records pertaining to Board's decision to authorize the Federal Reserve Bank of New York (FRBNY) to provide a temporary loan to Bear Stearns through an extension of credit to JP Morgan Chase; at issue, plaintiff appeals district court's decision to grant summary judgment to the Board, specifically, with respect to records withheld pursuant to Exemption 5

**Holding:** Affirming the district court's grant of summary judgment to the Board based on its finding that the Board's withholdings pursuant to Exemption 5 were appropriate

***Judicial Watch, Inc. v. Dep't of Treasury*, No. 09-1508, 2011 WL 2678930 (D.D.C. July 11, 2011) (Howell, J.)**

**Re:** Request for records pertaining to the Treasury's Troubled Asset Relief Program (TARP) and to Treasury's investments, through that program, in a Massachusetts bank

**Holding:** Granting Treasury's motion for summary judgment except for three documents that contain reasonably segregable material that should have been released

### **Exemption 6**

***Prudential Locations LLC v. HUD*, No. 09-16995, 2011 WL 2276206 (9th Cir. June 9, 2011) (Berzon, J.)**

**Re:** Request for records pertaining to individuals who reported to HUD their suspicions that plaintiff, a real estate company, was violating the law; at issue are the identities of two complainants, one of whom requested anonymity

**Holding:** Vacating the district court's grant of summary judgment to HUD and remanding the matter for further proceedings

***Wade v. IRS*, No. 10-65, 2011 WL 1028124 (D.D.C. Mar. 23, 2011) (Collyer, J.)**

**Re:** Requests for list of Enrolled Agents, who are practitioners who may practice before the IRS; remaining at issue are the home telephone numbers for Enrolled Agents

**Holding:** Granting the IRS's motion for summary judgment on the basis that it properly withheld home phone numbers of third parties pursuant to Exemption 6

**Exemption 7(A)**

***Moffat v. DOJ*, No. 09-12067, 2011 WL 3475440 (D. Mass. Aug. 5, 2011) (Casper, J.)**

**Re:** Requests for records pertaining to plaintiff's criminal case

**Holding:** Granting summary judgment to defendants based on adequacy of their searches and withholdings

**Exemption 7(C)**

***FCC v. AT&T, Inc.*, No. 09-1279, 2011 WL 691243 (U.S. Mar. 1, 2011) (Roberts, C.J.)**

**Re:** Challenge made by AT&T to FCC order denying AT&T's claim that release of records obtained during course of an FCC investigation would violate Exemption 7(C)

**Holding:** Concluding that corporations do not have a personal privacy interest under Exemption 7(C)

***Roth v. DOJ*, No. 09-5428, 2011 WL 2535796 (D.C. Cir. June 28, 2011) (Tatel, J.)**

**Re:** Requests for records that might corroborate plaintiff's claim that four other men actually committed the quadruple homicide for which he was convicted; at issue are documents reviewed *in camera* by the district court and the D.C. Circuit for which the FBI claimed Exemption 6, 7(C) and 7(D) and plaintiff's request for information pertaining to three named individuals who he accuses of committing the murders

**Holding:** Affirming, in part, the district court's decision that the FBI properly withheld certain information pursuant to Exemptions 7(C) and 7(D); and reversing, in part, the district court's approval of the FBI's *Glomar* response and certain information withheld pursuant to Exemption 7(D); and remanding for further proceedings

***Blackwell v. FBI*, No. 10-5072, 2011 WL 2600831 (D.C. Cir. July 1, 2011) (Kavanaugh, J.)**

**Re:** Request for various records related to the criminal investigation and prosecution of plaintiff for insider trading

**Holding:** Affirming the district court's decision that the FBI properly invoked Exemptions 7(C) and 7(E) and conducted an adequate search

***World Pub. Co. v. DOJ*, No. 09-574, 2011 U.S. Dist. LEXIS 32594 (N.D. Okla. Mar. 28, 2011) (Kern, J.)**

**Re:** Request for booking photographs or "mug shots" of six individuals

**Holding:** Concluding that Tulsa World established that it has standing to bring the instant lawsuit; and granting USMS's motion for summary judgment on the basis that it properly withheld booking photographs of third parties pursuant to Exemption 7(C)

**Exemption 7(D)**

***Pickard v. DOJ*, No. 08-15504, 2011 WL 3134505 (9th Cir. July 27, 2011) (Silverman, J.)**

**Re:** Request for records pertaining to an informant in plaintiff's criminal case

**Holding:** Reversing district court's grant of summary judgment and concluding that the DEA cannot assert the *Glomar* response in conjunction with Exemptions 7(C) and 7(D) to deny the subject of the request's status as an informant where the government officially confirmed that status in open court in the course of official proceedings; and remanding the matter for the district court to determine the appropriateness of DEA's exemption claims

***Petit-Frere v. U.S. Atty's Office for S.D. Fla.*, No. 09-1732, 2011 WL 3443831 (D.D.C. Aug. 8, 2011) (Boasberg, J.)**

**Re:** Request for records related to an application for a wiretap targeting plaintiff

**Holding:** Granting summary judgment to defendants on the basis that they conducted an adequate search and properly applied Exemption 7(D)

**Exemption 7(E)**

***N.Y. Civ. Liberties Union v. DHS*, No. 09-5325, 2011 U.S. Dist. LEXIS 24436 (S.D.N.Y. Mar. 10, 2011) (Koeltl J.)**

**Re:** Request for records pertaining to the Lower Manhattan Security Initiative (LMSI) for which the NYPD received grant funding from DHS; eighteen documents remain at issue

**Holding:** Granting government's motion for summary judgment with respect to Exemption 7(E)

**Exemption 7(F)**

***Sussman v. U.S. Marshals Serv.*, No. 03-610, 2010 U.S. Dist. LEXIS 90723 (D.D.C. Sept. 1, 2010) (Kennedy, J.)**

**Re:** First-party request

**Holding:** Determining that agency properly invoked Exemption 7(F)

***Mosby v. Hunt*, No. 09-1917, 2010 WL 2794250 (D.D.C. July 15, 2010) (Bates, J.)**

**Re:** First-party request

**Holding:** Concluding that agency properly asserted Exemption 7(F)

**Exemption 8**

***Judicial Watch, Inc. v. Dep't of Treasury*, No. 09-1508, 2011 WL 2678930 (D.D.C. July 11, 2011) (Howell, J.)**

**Re:** Request for records pertaining to the Treasury's Troubled Asset Relief Program (TARP) and to Treasury's investments, through that program, in a Massachusetts bank

**Holding:** Granting Treasury's motion for summary judgment except for three documents that contain reasonably segregable material that should have been released



### **Exhaustion of Administrative Remedies**

***Vest v. Dep't of the Air Force*, No. 09-1083, 2011 WL 2469593 (D.D.C. June 22, 2011) (Walton, J.)**

**Re:** Requests for records concerning individuals that plaintiff believes "may figure in some of the mysterious circumstances surrounding his father's death in Texas in 1946," and for records pertaining to plaintiff

**Holding:** Dismissing claims against six defendants based on plaintiff's failure to exhaust administrative remedies

***Stuler v. IRS*, No. 10-1342, 2011 U.S. Dist. LEXIS 66942 (W.D. Pa. June 23, 2011) (Ambrose, J.)**

**Re:** Request for copies of "Complete Individual Master File – Martinsburg Computer Center" transcripts from 1994 – 2009

**Holding:** Dismissing, without prejudice, the complaint for failure to exhaust administrative remedies

### **Segregation**

***Milton v. DOJ*, No. 08-242, 2011 WL 1743234 (D.D.C. May 6, 2011) (Roberts, J.)**

**Re:** Requests for recordings of prison telephone conversations between plaintiff and others

**Holding:** Denying BOP's motion for summary judgment without prejudice, finding that although BOP properly invoked Exemption 6 as a basis for withholding certain recordings, it did not satisfy its obligations with respect to segregability

***Smith v. Dep't of Labor*, No. 10-1253, 2011 WL 3099703 (D.D.C. July 26, 2011) (Boasberg, J.)**

**Re:** Request for records pertaining to a mining disaster

**Holding:** Concluding that defendant's Vaughn index is adequate and segregation is not required where documents indicate that agency conducted a line-by-line review and segregation of material

### **Adequacy of Search**

***Ancient Coin Collectors Guild v. U.S. Dep't of State*, No. 09-5439, 2011 WL 1437419 (D.C. Cir. Apr. 15, 2011) (Williams, J.)**

**Re:** Request for records pertaining to import restrictions imposed on cultural artifacts from China, Italy, and Cyprus

**Holding:** Reversing and remanding, in part, the district court's holding on the adequacy of the agency's search

### **Open America Stay**

***Nat'l Security Archive v. SEC*, No. 10-116, 2011 WL 843945 (D.D.C. Mar. 10, 2011) (Leon, J.)**

**Re:** Request for records pertaining to SEC investigations of Chiquita Brands International, Inc. related to its activities in Colombia

**Holding:** Granting SEC's motion for a stay of proceeding for a period of twelve months based on a showing of "exceptional circumstances"

***Buc v. FDA*, No. 10-293, 2011 WL 304651 (D.D.C. Feb. 1, 2011) (Kollar-Kotelly, J.)**

**Re:** Requests for records pertaining to Zicam cold remedy nasal products

**Holding:** Denying FDA's motion for a stay

**Attorney Fees**

***Brayton v. Office of the U.S. Trade Rep.*, No. 09-5402, 2011 WL 1466337 (D.C. Cir. Apr. 19, 2011) (Griffith, J.)**

**Re:** Request for a classified international trade agreement between the United States and the European Union concerning Internet gambling

**Holding:** Affirming the district court's denial of plaintiff's request for attorney fees where USTR declassified and released the requested trade agreement to the public after the parties moved for summary judgment but before the court ruled

***Judicial Watch, Inc. v. DOJ*, No. 06-406, 2011 WL 1195789 (D.D.C. Mar. 31, 2011) (Kennedy, J.)**

**Re:** Request for legal opinions, orders, and other documents related to the Terrorist Surveillance Program

**Holding:** Granting plaintiff an award of attorney fees

**Agency Records**

***Reich v. DOE*, No. 09-10883, 2011 U.S. Dist. LEXIS 27317 (D. Mass. Mar. 17, 2011) (Gorton, J.)**

**Re:** Request for a report written by independent investigative panel concerning allegations of fraud and misconduct by certain scientists working at Oak Ridge National Laboratory (ORNL)

**Holding:** Concluding that investigative reports generated by ORNL are not agency records for purposes of the FOIA

**Fee Waiver**

***Bensman v. Nat'l Park Serv.*, No. 10-1910, 2011 WL 3489507 (D.D.C. Aug. 10, 2011) (Boasberg, J.)**

**Re:** Request for records pertaining to certain topographical data; at issue is plaintiff's fee waiver request

**Holding:** Denying plaintiff's request for a fee waiver

***Ferrigno v. DHS*, No. 09-5878, 2011 WL 1345168 (S.D.N.Y. Mar. 29, 2011) (Sullivan, J.)**

**Re:** Request for records pertaining to plaintiff's employment-related harassment complaint

**Holding:** Denying plaintiff's request for a fee waiver